

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF**





# 75-1080

Docket No. 75-1080  
Docket No. 75-1079  
Docket No. 75-1105  
Docket No. T-4526  
Docket No. 75-1120  
Docket No. 75-1111

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IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

IN THE MATTER OF:

JOSEPH MOSES, A Grand Jury Witness, Docket No. 75-1080  
JOSEPH BUSCAGLIA, A Grand Jury Witness, Docket No. 75-1079  
LAWRENCE PANARO, A Grand Jury Witness, Docket No. 75-1105  
GASPER BONA, A Grand Jury Witness, Docket No. T-4526  
FRANK MAMBRINO, A Grand Jury Witness, Docket No. 75-1120  
ROBERT OLIVER, A Grand Jury Witness, Docket No. 75-1111

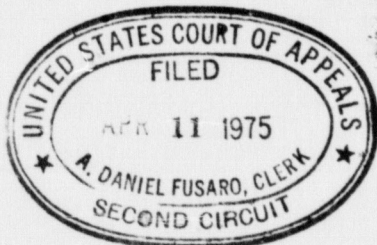
On Appeal from the United States District  
Court for the Western District of New York

SUPPLEMENTAL BRIEF OF GRAND JURY WITNESSES-APPELLANTS  
AND APPENDIX

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## PRELIMINARY STATEMENT

The Supplemental Brief adopts the Preliminary Statement of the main brief herein with the addition that the order appealed from referring to Joseph Moses is dated March 10, 1975.

The said Joseph Moses also asserted his "general" Constitutional rights and, in argument, asserted his rights under the Fifth and Ninth Amendments as well as the First and Fourth Amendments to the United States Constitution.

## ADDITIONAL QUESTIONS PRESENTED

(1) Whether the Ninth Amendment of the United States Constitution grants a broader right against self-incrimination than that granted by the Fifth Amendment.

(2) Whether it is necessary, when there is a grant of immunity, to simultaneously preserve independent evidence the Government may have against a witness.

## STATUTES INVOLVED

United States Constitution, Amendment V.

No person...shall be compelled in any criminal case to be a witness against himself...

United States Constitution, Amendment IX.

The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

18 U.S.C. Section 6002.

Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before or ancillary to--

- (1) a court or grand jury of the United States
- (2) an agency of the United States, or
- (3) either House of Congress, a joint committee of the two Houses, or a committee (or a subcommittee) of either House, and the person presiding over the proceeding communicates to the witness an order issued under this part

the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

#### TABLE OF CASES

Kastigar v. U.S., (1972) 406 U.S. 441, 92 S. Ct. 1653; rehrg den.  
408 U.S. 931, 92 S. Ct. 2478.

#### STATEMENT OF FACTS

The Statement of Facts set forth in the main brief is adopted herein.

#### POINT I

##### APPELLANTS HAVE A RIGHT TO REMAIN SILENT GUARANTEED BY THE NINTH AMENDMENT WHICH IS VIOLATED BY THE CONTEMPT CITATION.

In 1972 the Supreme Court addressed itself to the problem of immunity in Kastigar v. United States, (1972) 406 U.S. 441, 92 S. Ct. 1653; rehrg den. 408 U.S. 931, 92 S. Ct. 2478, where it decided that the use immunity granted by 18 U.S.C. 6002 was constitutional in that it was co-extensive with the scope of the privilege granted by the Fifth Amendment.

The issue in Kastigar concerned itself with the privilege granted under the Fifth Amendment only, and did not address itself to any other portions of the Constitution which grant rights and privileges to the people.



In this regard, the question arises as to whether the Ninth Amendment contains a right similar to the privilege against self-incrimination as contained in the Fifth Amendment.

It has been considered that the Fifth Amendment, as well as other Amendments to the Constitution, grants rights and privileges. The Ninth Amendment, however, grants no rights--it is based on the belief that the people have rights and sets forth the further precept that the people have more rights than merely those enumerated in the Constitution. "This Amendment, therefore, was meant to exclude the inference that the Federal Government could touch any of the great fundamental rights of the people, because there was no special inhibition of power to the Federal Government to invoke them." 2 Tucker, Constitution of the United States, p. 688. In other words, the framers of our Constitution recognized that the people had other, further and greater rights than those enumerated.

The question then becomes, what are those rights held by the people and not enumerated in the Constitution?

The Supreme Court in Kastigar looked at the history of the power to compel testimony as well as the right to remain silent. The Court did say that the power to compel testimony is not absolute but is tempered by various exemptions from testimonial duty.

There is a question of starting points--does a government first have the power to compel testimony which is then circumscribed by various exemptions--or does a witness, when faced with possible prosecution, have the right not to aid in his own prosecution by remaining silent, which right may be lessened by a grant of immunity.

✓ The right not to incriminate oneself is basic and it is urged that this right is contained not only in the Fifth Amendment but also in the Ninth Amendment. The difference is, is that those general rights implied in the Ninth Amendment are broader in scope than the particularization of rights contained in the other Amendments. Logic does not demand that the Amendments are exclusive nor that they may not touch each other or contain elements of each other.

It is interesting to note that note 13 of Kastigar discusses one of the first immunity statutes, 9 Anne, c. 14 Sections 3-4 (1710) which calls for an admission of an illegal act, by the payment to the loser of gambling winnings, after which there could be no prosecution. The important aspect of the statute was that there could be no prosecution, no matter what other evidence could be addressed. It is also important to note that this statute became the model for the Colonial Legislature of New York (see note 13 to Kastigar).

The importance of both the English and Colonial statutes is that the framers of our Constitution recognized a basic right not to have testimony compelled unless all threat of prosecution was removed. This right is more than the privilege contained in the Fifth Amendment which, in Kastigar's view, is merely a right not to have what a witness says used against him.

It is urged, therefore, that the Ninth Amendment contains an absolute right to remain silent unless all threat of prosecution is removed.



## POINT II

APPELLANTS MUST NOT BE HELD IN CONTEMPT SINCE THE GRANT OF IMMUNITY ALSO REQUIRES THAT ALL EVIDENCE AGAINST THEM OBTAINED PRIOR TO THEIR TESTIMONY MUST BE SEGREGATED AND PRESERVED.

In allowing the constitutionality of "use" immunity (18 U.S.C. 6002) the Supreme Court, in Kastigar, supra. imposed a duty on the prosecution "to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony".

While it may be argued that a prosecutor is under no duty to show that his evidence is independent of compelled testimony, until such time as a former witness is accused, the length of time between testimony and accusation weakens the immunity granted under 18 U.S.C. 6002 so that, in effect, it is not co-extensive with the privilege afforded by the Fifth Amendment.

While a prosecutor must show that his evidence is independent of testimony, as the time between testimony and prosecution lengthens, it becomes more difficult for the defense to show that the source of the evidence is tainted.

Many crimes cross jurisdictional and agency lines. Gambling may be both a Federal and State crime while the proceeds of gambling may involve prosecutions origination from the Justice Department as well as the Internal Revenue Service.

It is because of these problems that an operational framework is needed at the earliest possible time to safeguard the rights of an accused when he has earlier testified under a grant of "use" immunity.

It is urged that the earliest time is at the "moment of impact" when a witness provides the prosecution with evidence which may give direction to an investigation, the results of which, in turn, may be used against him.

The only way a grant of immunity can be meaningful is to segregate independent evidence at the time of taking testimony.

#### CONCLUSION

For the reasons stated above, the adjudication of civil contempt should be reversed.

Respectfully submitted,

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APPENDIX

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1 PROCEEDINGS:

February 25, 1975

2 APPEARANCES:

RICHARD J. ARCARA, United States Attorney,  
by ROBERT C. STEWART, Attorney, United  
States Department of Justice, and  
JAMES W. GRESENS, Attorney, United States  
Department of Justice.

5 JULIUS M. RAMM, Esq., Attorney for  
the Witness JOSEPH MOSES.

7 MR. GRESENS:

Your Honor, the next matter we have  
is the matter of Joseph A. Moses, also  
a grand jury witness. Mr. Moses is here  
with counsel this morning, Mr. Julius  
Ramm.

12 THE COURT:

Mr. White, file this order in the  
Bona matter. Good morning, Mr. Ramm.  
At the very beginning I want to thank you  
for taking on this assignment on very  
short notice. I appreciate that.

17 MR. RAMM:

My pleasure, your Honor.

18 MR. GRESENS:

Your Honor, Mr. Moses also appeared  
before the grand jury last Thursday and  
refused to answer questions. I have an  
application and an order and a letter  
from John C. Keeney attached, which I  
request the Court sign granting Mr.  
Moses immunity from prosecution. The  
Government believes his testimony is

1 material to the investigation.

2 THE COURT:

Mr. Ramm, before I sign it, is there  
3 anything you want to say about this?

4 MR. RAMM:

Yes, your Honor. One, as I under-  
5 stand, Mr. Moses is entitled to know  
6 the scope of the investigation and number  
7 two, I would ask whether there have been  
8 any listening devices used in this  
9 matter.

10 THE COURT:

I think, Mr. Stewart, as I know,  
11 last week when everyone appeared here,  
12 Mr. Ramm, that at that time, Mr. Stewart  
13 gave a detailed explanation of the  
14 thrust of their investigation and what  
15 this was about and also, we made a clear  
16 statement, he made a clear statement on  
17 the record that there was no listening  
18 devices, but I think so that there is  
19 no question about it, we should have  
20 similar presentation. I hope, - are  
21 the other lawyers here?

22 MR. RAMM:

There are a number of them.

23 THE COURT:

Mr. D'Agostino and Mr. Seeberg.  
24 All right. Mr. Stewart, will you state  
25 again, please, the question I put to you



1 was that your order provides that the  
2 questions may pertain to violations of  
3 Section 1955, 892 to 894 and 1962 of  
4 Title 18.

5 MR. RAMM:

Your Honor, if I may interrupt for  
6 a moment, we'll be provided copies of  
7 this order?

8 THE COURT:

The order? We can make a copy of  
9 the order for you. Mr. Stewart, will  
10 you explain again, please?

11 MR. STEWART:

Yes. The grand jury investigation  
12 is focusing upon activities at Nairy's  
13 Social Club and the Connecticut Club in  
14 the City of Buffalo. Said activities  
15 involving possible violations of  
16 Section 1955 which prohibits illegal  
17 gambling business; Sections 892 to 894,  
18 which prohibit extortionate credit  
19 transactions, and Section 1962 which  
20 prohibits racketeering activities. The  
21 questions are directed primarily at  
22 the loan sharking activity and racketeer-  
23 ing activity occurring at those premises  
24 or involving persons who frequent those  
25 premises.

1 THE COURT:

All right. As I understand also,  
2 that you mention loan sharking, and as  
3 I understand that your investigation also  
4 has to do with these activities also,  
5 which is in violation of the Federal law.

6 MR. STEWART:

Yes, sir.

7 THE COURT:

Mr. Ramm, - what about, has there  
8 been any electronic surveillance so far  
9 as Mr. Moses is concerned?

10 MR. STEWART:

No, sir.

11 THE COURT:

Mr. Ramm, is there anything further?

12 MR. RAMM:

Yes, your Honor; as part of the  
13 scope of the investigation, I would ask  
14 for outside dates. In other words, what  
15 period of time,- I gather up to the  
16 present, but what back, - how far back  
17 are you looking at?

18 MR. STEWART:

Approximately the date of John  
19 Cammilleri's murder, which I think was  
20 May of 1974, and I can't remember the  
21 exact date. From May of 1974 up to the  
22 present day.

23 THE COURT:

That is not to say, however, Mr.  
24 Ramm, that if inquiry leads in a manner  
25 to the questioner that it appears to be



1 appropriate to ask questions concerning  
2 prior times or perhaps related materials  
3 which may not bear directly upon these  
4 particular sections, that the questioner  
5 is foreclosed. The grand jury and the  
6 prosecutor may look into, may question  
7 about any matters which they feel may  
8 reasonably lead them to information which  
9 will be helpful to make determination  
10 about whether or not there were any  
11 statutes violated.

12 MR. RAMM:

13 There is one other problem which I  
14 may be anticipating, your Honor, which  
15 may not be a proper subject to talk about  
16 now, but I think may come up. As I  
17 understand, use immunity deals only  
18 with the scope and what comes out of  
19 the witness' mouth, but if questions are  
20 answered or information is elicited  
21 beyond the stated scope of the investiga-  
22 tion, - say something far removed from  
23 this particular location that you are  
24 talking about or gambling or racketeering  
25 but another crime, that use immunity does  
not necessarily cover.



1 THE COURT:

It certainly does cover. If the  
2 question is put and the answer is given,  
3 and it would either incriminate directly  
4 or indirectly, it cannot be used.

5 MR. RAMM:

Any crime.

6 THE COURT:

About any crime. I find the papers  
7 in order and I direct you, Mr. Moses, to  
8 go to the grand jury and answer the  
9 questions as truthfully as you can.  
10 Certainly, this gives you no permission  
11 to testify untruthfully and that would be  
12 a crime. During this, if you need some  
13 time to reasonably consult with your  
14 attorney, you may do so.

15 MR. RAMM:

May I have a copy of the order and  
16 a few minutes of review prior to Mr.  
17 Moses going in?

18 THE COURT:

All right. Mr. Gresens, next  
19 matter.  
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PROCEEDINGS:

March 4, 1975

APPEARANCES:

RICHARD J. ARCARA, United States Attorney  
by JAMES W. GRESENS, Attorney, United  
States Department of Justice.

JULIUS M. RAMM, Esq., Attorney for  
the Witness JOSEPH MOSES.

THE COURT:

All right, Mr. Ramm.

MR. RAMM:

Your Honor, I join in with the other  
motions as far as the completeness of  
the record in this matter. The questions  
do not show on their face that they are  
pertinent, material or relevant. There  
are a few introductory questions and  
that is basically it. This deals with  
Nairy's Social Club. I also join in  
with Mr. Abramowitz' motion as far as  
listening devices is concerned. When  
I was here originally, I thought I had  
received a definite "no" answer, but  
in discussion with the other attorneys,  
I am not quite sure whether it was a  
"no" answer as far as Mr. Moses' home  
was concerned or merely conversations, -  
his conversations which may have been  
overheard. Consequently, I would like  
a clarification of that and if there



1 were listening devices in Nairy's  
2 Social Club, which is the club under  
3 investigation in this matter, I believe,  
4 then I would like a clarification in  
5 line with Mr. Abramowitz' argument.

6 THE COURT:

Mr. Gresens, can you make a state-  
7 ment again as far as Mr. Moses is con-  
8 cerned?

9 MR. GRESENS:

Yes, your Honor. I have had the  
10 FBI check the records and I am prepared  
11 to state that Mr. Moses' home was not  
12 the subject of electronic surveillance  
13 and that Mr. Moses has not been heard  
14 on any electronic surveillances.

15 With respect to the electronic surveil-  
16 lance at Nairy's Social Club, I would  
17 merely repeat the same argument that I  
18 made before, based on the Womack case,  
19 that Mr. Moses has no standing to object  
20 to any or to question any electronic  
21 surveillances in which he was not over-  
22 heard.

23 THE COURT:

You definitely state that he was  
24 not overheard?

25 MR. GRESENS:

I asked that question directly of

1 the FBI Agents involved and they have  
2 answered in the negative.

3 THE COURT:

4 Very well. I think again with Mr.  
5 Moses, that a more complete record should  
6 be made of what you want to elicit from  
7 him so, Mr. Moses, go back to the grand  
8 jury and we can finish here and complete  
9 the record. Next witness, please.  
10  
11

12 \* \* \* \* \*



1 PROCEEDINGS: March 5, 1975.

2 APPEARANCES: RICHARD J. ARCARA, United States Attorney,  
3 by JAMES W. GRESENS, Attorney, United  
4 States Department of Justice.

5 JULIUS M. RAMM, Esq., Attorney for  
6 the Witness JOSEPH MOSES.

7 THE COURT: Mr. Gresens.

8 MR. GRESENS: Your Honor, if we could take the  
9 matter of Joseph Moses, a grand jury  
10 witness first, please.

11 THE COURT: Mr. Moses, can you step up, please.  
12 In this matter, Mr. Moses was in here  
13 going back to the 25th of February and  
14 then there was a notice served seeking  
15 an order holding him in contempt dated  
16 on February 25th made returnable on the  
17 4th of March. Then, as I understand it,  
18 he went back to the grand jury and did  
19 the witness testify, Mr. Gresens?

20 MR. GRESENS: No, your Honor, the witness did not.  
21 He was before the grand jury this morning.  
22 He was asked approximately sixteen ques-  
23 tions and he refused to answer any of  
24 these questions.

25 THE COURT: And the directive of the Court to  
be more specific as far as the questions

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are concerned - -

MR. GRESSENS:

Yes, sir, there were dates asked, names asked and specific questions, your Honor.

THE COURT:

Mr. Gresens, I think yesterday we supplied counsel with transcript and had a short adjournment so that a further conversation could be had with the witness. I think that would be in order in this case as well. Could you have that material ready by Friday, let us say?

MR. GRESSENS:

Yes. I have checked with the court reporter and he assures me that it can be ready tomorrow or early Friday at the very latest.

THE COURT:

Why don't we adjourn this then until 2:00 o'clock Friday afternoon for further appearance.

MR. RAMI:

I would appreciate, your Honor, the only thing, we do have the transcripts well in advance, - not well in advance but in time rather than just walking through the door here.

THE COURT:

He said he will have them available



1 on Friday which means it is sort of a  
2 two-way street. I think that some arrange-  
3 ment ought to be made so that they could  
4 be dropped at your office on Friday.

5 MR. RAMM:

That is fine. 2:00 o'clock Friday.  
6 Thank you.

7 THE COURT:

In the meantime, Mr. Moses, consult  
8 with your lawyer, Mr. Ramm. As you know,  
9 under the section the Government is  
10 proceeding under, generally speaking, if  
11 a witness refuses to answer questions,  
12 that under the circumstances here, we  
13 have the order that you can be committed  
14 for failure to answer and with the  
15 intention that it is the intent of the  
16 law not to punish, but to have the  
17 witness respond and so that we will  
18 adjourn your further appearance until  
19 2:00 p.m. on Monday afternoon.

20 MR. GRESENS:

Excuse me, your Honor, Monday or  
21 Friday? I thought you said Friday.

22 THE COURT:

23 No. I said you deliver the material  
24 to Mr. Ramm on Friday and we will adjourn  
25 court appearance until 2:00 p.m. Monday,  
March 10th.

1 MR. RAMA:

Okay. Thank you, your Honor.

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1 (By direction of the Court, the  
2 following excerpt from "IN THE MATTER OF  
3 GASPER BONA, A GRAND JURY WITNESS,  
4 CRIMINAL DOCKET MISC. CR. 155", proceed-  
5 ings of February 20, 1975, is made part  
6 of this record.)  
7

8 THE COURT:

9 As I understand it, you have a  
10 number of similar applications being made  
11 here. There are a number of other wit-  
12 nesses; that you explain in your applica-  
13 tion that Mr. Bona, who is now here be-  
14 fore the Court, that you believe that he  
15 can give testimony about alleged violations  
16 of laws including particular violations  
17 of Section 1965, 892, 894, 1962, of  
18 Title 18. As you know, it is always my  
19 concern that I know that what we are deal-  
20 ing with here is an investigation of  
21 violation of Federal laws and as I under-  
22 stand it, as far as all of the other  
23 witnesses are concerned here, that your  
24 general investigation has to do with the  
25 same problem. I know that on prior days  
here, we have had discussion about what

1 this was about and I think that so that  
2 we have an understanding by all of the  
3 witnesses who are here and for the record  
4 so that we know in a general fashion what  
5 you want to ask Mr. Bona about, and I  
6 suppose, in a general fashion, that will  
7 also relate to the other witnesses.

8 MR. STEWART:

9 That is correct, your Honor. As I  
10 believe your Honor knows, this investiga-  
11 tion began, I think, in October, with  
12 the appearance of Mr. Tripi and Mr.  
13 Alberti before the grand jury and it was  
14 temporarily halted at that time and has  
15 been renewed recently. There indeed  
16 were, - an application was made to  
17 Magistrate Maxwell coincidental with an  
18 application to your Honor for a particular  
19 order. We had applied to Magistrate  
20 Maxwell for a series of search and  
21 seizure warrants which were issued on the  
22 6th and executed on the 7th which focused  
23 primarily around activities of two social  
24 clubs, being Nairy's and Connecticut Hall  
25 as well as the activities of a number of  
individuals associated with those two



1 locations. The order which your Honor  
2 had signed on our application called for  
3 a period of, - or sealed that particular  
4 affidavit for a period of forty-five  
5 days or until such earlier time as we  
6 were able to bring the investigation into  
7 an appropriate posture and that is what  
8 we are endeavoring to do at this time,  
9 and it is because of that, that time  
10 frame, and being mindful of the rights  
11 of third parties whose assets are tied  
12 up, as it were, during this period that  
13 we are interested in expediting this,  
14 but it is correct that all of these  
15 matters, the questions as to all the  
16 witnesses will be essentially the same  
17 and are related to the same investigation.

18 THE COURT:

19 All right. Can you explain briefly,  
20 in general terms what the investigation  
21 is about. I mean how it relates to these  
22 sections and how, in your opinion, there  
23 is a possible violation of Federal law.

24 MR. STEWART:

25 Yes, sir. It is our, - on informa-  
tion and belief, the two social clubs  
operate a card game, but not a normal

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card game. This is a house operated card game in which the house receives five per cent of the proceeds. Now, that is the basic gambling predicate, but in addition to that, and coincidental with the operation of the game, money is loaned by the house to various players in order to encourage the game and increase the stakes. The game is such that the house cannot lose. The players do not play against the house, but against each other and the house simply takes five per cent from the top. Now, the amounts that are loaned are normally interest free for the first seventy-two hours. Thereafter, they become so-called six for five loans of the sort which are prohibited by the loan shark statute. That is Sections 392 to 394. Quite aside from that particular activity, loan activity, we have reason to believe that certain individuals have been, - have used those clubs as locations in which they conduct a regular loan shark operation. That is, money, large sums



1 of money, thousands of dollars are loaned  
2 to individuals at a six for five basis  
3 regularly and we have reason to believe,  
4 as your Honor knows, from Mr. Timineri,  
5 that some violence has been, is and  
6 continues to be connected with the  
7 collection of these particular loans.  
8 Now, I think under existing case law,  
9 the activities which I have described  
10 fall within certainly 1955 and 892 dash  
11 894, the Racketeering Violation 1962, of  
12 course, speaks of collections of unlawful  
13 debts, debts which could not be collected  
14 under State law, which I think gambling  
15 debts are. It also speaks of gambling  
16 activity which violates the law of the  
17 State and it is the continuing nature  
18 of these violations among certain of the  
19 individuals over a period of years that  
20 we think brings it within the Rico  
21 Statute or the Racketeering Statute for  
22 purposes of investigation."  
23  
24  
25

(Excerpt concluded.)

\* \* \* \* \*

1 (By direction of the Court, the  
2 following excerpt from "IN THE MATTER OF  
3 GASPER BONA, A GRAND JURY WITNESS,  
4 CRIMINAL DOCKET MISC. CR. 155", proceed-  
5 ings of March 7, 1975, is made a part of  
6 this record.)  
7

8 THE COURT: Mr. Gresens.

9 MR. GRESENS: Your Honor, perhaps we can take the  
10 matter of Mr. Joseph Buscaglia first, a  
11 grand jury witness.

12 THE COURT: Good morning, Mr. Abramowitz.

13 MR. ABRAMOWITZ: Good morning, your Honor.

14 THE COURT: Where do we stand now, Mr. Gresens?

15 MR. GRESENS: Your Honor, Mr. Buscaglia appeared  
16 before the grand jury pursuant to your  
17 directions on the 4th of March and once  
18 again, he refused to testify. At this  
19 time, I would like to hand to the Court,  
20 a copy of the grand jury proceedings  
21 which were had on that date and ask it  
22 be incorporated in the notice of motion  
23 filed with the Court previous to this  
24 time.

25 THE COURT: Have you received a copy of this,



1 Mr. Abramowitz?

2 MR. ABRAMOWITZ: I did receive it yesterday, your  
3 Honor.

4 THE COURT: In this situation, Mr. Buscaglia  
5 had appeared on the 4th and before that,  
6 he also appeared on prior occasions.

7 MR. GRESENS: Yes. He appeared twice before,  
8 your Honor. He appeared on February  
9 20th, at which time he refused to answer  
10 questions and asked for counsel. The  
11 Court granted him immunity on February  
12 25th. He appeared later the same day  
13 and once again refused to answer ques-  
14 tions and again on the 4th of March, the  
15 Court directed once again that he return  
16 to the grand jury room and the Government  
17 put more specific questions to him at  
18 that time.

19 THE COURT: I see. Mr. Abramowitz, - are you  
20 making a motion here, Mr. Gresens. You  
21 made the motion before and I suppose you  
22 renew it.

23 MR. GRESENS: Yes, your Honor. I would like, at  
24 this time, move that the Court sign this  
25 order which I will hand up remanding

1 Mr. Buscaglia to the custody of the  
2 United States Marshals until such time  
3 as he testifies pursuant to 1826 of  
4 Title 18.

5 THE COURT:

6 As you know, Mr. Abramowitz,  
7 Section 1826 provides that whenever a  
8 witness in any proceedings before a grand  
9 jury of the United States refuses without  
10 just cause shown to comply with an order  
11 of the Court to testify, may summarily  
12 order his confinement in a suitable  
13 place until such time as the witness  
14 is willing to give such testimony and  
15 provide such information. In my reading  
16 of the cases decided and, of course,  
17 the related cases under related sections,  
18 it seems to me that Mr. Buscaglia has  
19 had more than enough opportunity to  
20 comply with the order of the Court to  
21 testify here. In addition, we have the  
22 transcript. I have not had a chance to  
23 read it, but what do you say about this?

24 MR. ABRAMOWITZ:

25 Your Honor, Mr. Buscaglia refused  
not pursuant to the Fifth Amendment  
ground. Actually, he did refuse pursuant



to Fifth Amendment grounds, but most importantly pursuant to the First and Fourth Amendment rights to answer any questions which dealt with the Connecticut Social Club or any questions which could possibly have related to the Connecticut Social Club, which is officially known as the Gettysburg Social Club and also known as the Blue Banner Social Club. Your Honor, I have submitted to this Court this morning, or to your clerk, - I don't know if you have them, - an affidavit by Mr. Buscaglia and an affidavit by myself.

THE COURT:

Do you have the originals?

MR. ABRAMOWITZ:

I gave them to Susan Bloom, your Honor.

THE COURT:

When did you give them to her?

MR. ABRAMOWITZ:

About ten minutes ago.

THE COURT:

Will you check, Mr. White. Do you have a copy of those?

MR. ABRAMOWITZ:

Yes, I do, your Honor.

THE COURT:

Do you have a copy, Mr. Gresens?

MR. GRESENS:

Yes, I have just received it, your Honor, a few minutes ago.

1 THE COURT:

Why don't you continue, Mr.

2 Abramowitz.

3 MR. ABRAMOWITZ:

4 Yes. Your Honor, in this case, one  
5 of the grounds we assert is the First  
6 Amendment ground of freedom of associa-  
7 tion. In this case, your Honor, Mr.  
8 Buscaglia is a member and secretary-  
9 treasurer of the Gettysburg Social Club  
10 which has its principal office on  
11 Connecticut Street in the City of  
12 Buffalo. I have submitted to the Court  
13 the certificate of incorporation under the  
14 State of New York for that social club.  
15 Now, your Honor, the purpose for which  
16 the corporation was formed are all those  
17 reasons which promote First Amendment  
18 freedoms of association which promote  
19 and protect it to promote fellowship,  
20 extend acquaintanceship, social gatherings  
21 and lectures, et cetera. Mr. Buscaglia  
22 has pointed out in his affidavit that  
23 until the grand jury's subpoenaing of  
24 members of his social club and until  
25 his own subpoenaing, and he is the  
secretary-treasurer, - that social club



1 was a thriving organization open twenty-  
2 four hours a day where people were  
3 constantly about exchanging ideas,  
4 chatting with one another, talking about  
5 politics, the affairs of the day and  
6 other matters, your Honor. Now, once  
7 the grand jury began its investigation  
8 and once the members were subpoenaed,  
9 there was such a chill imposed upon the  
10 social club that the entire club has  
11 been forced to shut down and not one  
12 person will enter the club, your Honor,  
13 to go there pursuant to their First  
14 Amendment rights of association. Now,  
15 your Honor, this is a case wherefore,  
16 once the defense has, I would assert, a  
17 presumption of regularity on its side.  
18 We do have here, your Honor, a legitimate,  
19 not for profit corporation of the State  
20 of New York whose purpose is to foster,  
21 protect and, - to foster and protect  
22 First Amendment rights of association  
23 and speech. We now have a case, your  
24 Honor, where it is uncontroverted that  
25 as soon as the grand jury investigation



1 begins, they subpoena an officer of the  
2 corporation. They subpoena many members  
3 of the corporation, that corporation is  
4 forced to shut down, your Honor. Now,  
5 I think that a case, - that an analogous  
6 case is the case of Bursey vs. the  
7 United States, which I said it in my  
8 papers to this Court sometime earlier in  
9 this week. Now, that was a case where  
10 there was a newspaper involved, your  
11 Honor, and the grand jury began to sub-  
12 poena, as I understand it, records of  
13 the newspaper and began to subpoena  
14 newsmen. Now, your Honor, the Court  
15 there held that when the grand jury is  
16 going to invade a First Amendment  
17 protected right such as a newspaper,  
18 the burden then shifts to the Government  
19 to show that there is a compelling reason  
20 for this investigation, such, that it  
21 overrides the freedom of press or speech  
22 or association protected by the First  
23 Amendment. I submit, your Honor, that  
24 when we have First Amendment rights at  
25 stake and we have an absolute chilling

1 effect here which is uncontroverted and  
2 now the burden rests upon the Government  
3 to show that it is involved in a  
4 legitimate investigation and to present  
5 evidence to show that it is of such  
6 import that it supersedes the First  
7 Amendment rights and that it justifiably  
8 imposes this chill on First Amendment  
9 rights, your Honor. Your Honor, if this  
10 were the B'Nai Brith Lodge or an NAACP  
11 Meeting House, the Irish Club of South  
12 Buffalo and the grand jury began to  
13 subpoena officers of this organization  
14 and as a result of the subpoenaing of  
15 the officers and members of the organiza-  
16 tion, everyone was afraid to go in and  
17 discuss whatever it was they were dis-  
18 cussing in these places, well, I submit  
19 that this Court's attitude would be one  
20 which would ask the Government to show  
21 that there was something legitimate and  
22 compelling about it. Now, here, your  
23 Honor, we have another organization  
24 existing under the laws of the State  
25 of New York for the purposes of fellow-



1 ship, acquaintanceship, close social  
2 intercourse among the members, to promote  
3 the welfare of its members, to promote  
4 brotherhood and sociability among members,  
5 to hold and conduct social meetings, et  
6 cetera, et cetera, and when an organiza-  
7 tion like this is shut down, your Honor,  
8 I submit this Court cannot summarily  
9 hold my client in contempt, but must,  
10 at least, hold a hearing in this case, as  
11 it would if a newspaper were shut down  
12 or if some obviously legitimate organiza-  
13 tion were shut down. Your Honor, there  
14 is also a case decided in 1970 in the  
15 Fourth Department, United States vs.  
16 Doc.

17 THE COURT:

When you say Fourth Department, you  
mean - -

18 MR. ABRAMOWITZ:

The Appellate Division of the State  
19 of New York, your Honor.  
20

21 THE COURT:

I see, the Appellate Division of  
the State of New York.  
22

23 MR. ABRAMOWITZ:

At 315 NY Supp.2, 5, in 1970. In  
that case, your Honor, the grand jury  
24 in Erie County subpoenaed records of the  
25



1 State University of New York  
2 Philosophical Society and a motion was  
3 made to quash that subpoena. Now, the  
4 Appellate Division upheld Judge Bayger's  
5 refusal to quash the subpoena, but  
6 pointed out that if the organization  
7 could show some chilling effect, - could  
8 have shown some chilling effect, some  
9 refusal of members to go to the club,  
10 some lessening of membership in the  
11 organization, then the matter would have  
12 been different, would have had to have  
13 been handled in a different way, but  
14 because none of those showings were made,  
15 it affirmed Judge Bayger's order refusing  
16 to quash the subpoena. In this case,  
17 your Honor, we have shown we have a  
18 legitimate organization and we have shown  
19 obvious chill, actually, more than a  
20 chill, a total freezing effect because  
21 no one is willing and everyone is afraid  
22 to do anything with respect to that  
23 social club, so I submit, your Honor, on  
24 these grounds, at the very least, the  
25 Government now is obligated to come

1 forward and to show that it has such  
2 a compelling state interest in effect  
3 that it justifiably overrides these  
4 First Amendment considerations and for  
5 the record, your Honor, in case Mr.  
6 Justice William O. Douglas' principles  
7 ever come to light, I also assert for  
8 the record, that there should be no  
9 balancing at all, but that the Government  
10 in no way should be permitted to sub-  
11 poena, - should be, in any manner, able  
12 to invade any First Amendment freedoms.

13 Your Honor, the second argument  
14 I would like to make relates to the  
15 argument which again I made in the early  
16 part of the week in which you apparently  
17 conducted an in camera, ex parte hearing  
18 with the Government. It was our asser-  
19 tion then and it is our assertion now  
20 that there were electronic eavesdropping  
21 involved in the Gettysburgh Social  
22 Club. The Government refused to affirm  
23 or to deny that, but they do state that  
24 they never heard Mr. Buscaglia's  
25 conversation on any of their tapes.



1 Your Honor, I would assert that this is  
2 straight out of Fantasyland and straight  
3 out of Alice in Wonderland. I mean  
4 either they do or they don't. If they  
5 do, we have a right to have a hearing.  
6 If they don't, they can't possibly assert, -  
7 they shouldn't be permitted to assert  
8 that they haven't heard anything. It  
9 just doesn't make logical sense, your  
10 Honor. Further, and more important, I  
11 would suggest that if there is a bug in  
12 there, it is not simply a wiretap and  
13 it can't be a wiretap because, as I  
14 understand, there are no telephones.  
15 It would have to be some general intru-  
16 sion listening to many voices and many  
17 conversations, and I would submit, your  
18 Honor, that the Government cannot come  
19 here in good faith and say they never  
20 heard Mr. Buscaglia's conversation, they  
21 never heard his voice on that tape.  
22 They don't know whose voice they heard  
23 on the tape, your Honor, and they may  
24 well have asked him questions relating  
25 to statements which he made, which he was



1 overheard making on the tape, but they  
2 don't know that it was Mr. Buscaglia  
3 or anyone and I would submit, your Honor,  
4 that if the Government is going to use  
5 an overly broad intrusive eavesdropping  
6 device such that it cannot identify  
7 voices and particularly, where Mr.  
8 Buscaglia is the secretary-treasurer and  
9 is in there, it cannot now come back and  
10 say "Well, we didn't hear his voice".  
11 They don't know whose voice they heard,  
12 your Honor, and I submit that they have  
13 got an affirmative obligation now if  
14 they did use this overly broad device  
15 to show that they did not hear Mr.  
16 Buscaglia's voice on that tape and that  
17 the questions that they asked him did  
18 not relate to conversations in which he  
19 would be involved in, which he would have  
20 been involved in. Further, your Honor,  
21 and Mr. Murphy and I are joining in  
22 each other's arguments and Mr. Murphy  
23 is going to elaborate on this further,  
24 but another argument I would make, your  
25 Honor, is that the Government's papers  
are woefully defective. In the first

1 place, your Honor, the authorization that  
2 they have gotten is from an Acting  
3 Assistant Attorney General which is not  
4 what the statute authorizes, your Honor.  
5 It is my understanding that the statute  
6 requires a specially designated person.  
7 I believe an Assistant Attorney General,  
8 and further, your Honor, in October of  
9 this year - -

10 THE COURT:

So we clear the record, Mr. Keeney  
11 pointed out he is serving in the office  
12 of Assistant Attorney General.

13 MR. GRESENS:

That is correct, your Honor.

14 THE COURT:

15 In other words, there is no one  
on vacation now or anything like that?

16 MR. GRESENS:

17 That's right. The slot that Mr.  
18 Petersen left when he retired has not  
19 been permanently filled, has not been  
officially filled, so in that capacity,  
20 Mr. Keeney is the Acting Attorney General.  
21 He is the one that is in charge there  
22 every day. He is not filling in for some-  
23 one.

24 MR. ABRAMOWITZ:

25 So I would submit to you, your Honor,  
that that is hearsay at this point.



1 We don't know exactly how he got there.  
2 I would suspect that Mr. Gresens, my  
3 good friend, knows more about the actual  
4 day to day workings of the Attorney  
5 General's office in the Criminal Division  
6 as I do, or most respectfully, the Court  
7 does, and if he is going to make an  
8 assertion like that, your Honor, it  
9 seems to me, at least, there ought to  
10 be a hearing as to what he is really  
11 doing there. Maybe he is doing maritime  
12 work. I don't know, your Honor. Maybe he  
13 is not really in charge. Maybe someone  
14 else is. I don't know. Whatever letter  
15 there is is not notarized and we don't  
16 know that it is his signature, your  
17 Honor, but I don't want to get into that  
18 too much at this point, your Honor.  
19 I just, - although I asserted as a firm  
20 ground, I also assert that in October  
21 and November of this year, another  
22 grand jury proceeding in the matter of  
23 Mr. Politano, who, at that time, was  
24 represented by William Mahoney, this  
25 Court held that the very same papers



1 which the Government brings before this  
2 Court in an attempt to have this Court  
3 sign the order sending my client to  
4 jail was defective, in that it was  
5 completely conclusiary, it didn't give  
6 any reasons.

7 THE COURT:

8 We only can take one case at a time,  
9 Mr. Abramowitz. Different facts, differ-  
10 ent cases. When I started out in all of  
11 these cases and I told the Government,  
12 and I have looked through the transcript  
13 now, that I wanted to be made aware so  
14 that I could make a decision that it  
15 was in the public interest and, there-  
16 fore, the simple statement in the  
17 application that they are investigating  
18 violations of Section 1951, although it,  
19 perhaps, met the letter of the law, it  
20 appeared to me it did not meet the spirit  
21 of it and for that reason, I told Mr.  
22 Stewart, acting for the Government, to get  
23 more information to me. In that case,  
24 he chose to delay the appearance of Mr.  
25 Politano so that he could spell it out  
in greater detail with, perhaps, some

1 affidavit. In this case, the Government,  
2 we went ahead and made a record before  
3 the grand jury of what the questions  
4 were. I have had an opportunity to look  
5 at the questions and it seems apparent  
6 that the Government is, indeed, investi-  
7 gating not only some kind of gambling  
8 activity which I suppose in the spirit  
9 of the modern age, might be considered  
10 to be something that one way or the  
11 other some people might have different  
12 views on, but they are also investigating  
13 a loan sharking activity and I am satis-  
14 fied that it is in the public interest  
15 to permit the Government to go forward  
16 and I believe that, - do you have anything  
17 more to say here in regard to your appli-  
18 cation?

19 MR. ABRAMOWITZ:

20 Not on that point, your Honor, that  
21 you have just spoken to, but with respect  
22 to the First Amendment arguments, I don't  
23 deny that the questions that they ask  
24 indicate that they believe that their  
25 investigation, something dealing with  
loan sharking and with gambling, but if



1 this were a newspaper or a B'Nai Brith  
2 Lodge and they were investigating - -

3 THE COURT:

4 Number one, Mr. Abramowitz, it is  
5 not a newspaper and secondly, whether it  
6 is a B'Nai Brith Lodge or whatever organ-  
7 ization it is, the questions here are  
8 not directed to the philosophy. They  
9 are not directed to what the views of  
10 the members are on national affairs,  
11 world affairs, community affairs, and if  
12 that was the case, we may have another  
13 question, but that is not the case here  
14 and, therefore, I am going to decide this  
15 case upon the facts which I have. Mr.  
16 Buscaglia and his fellows may meet there  
17 at this particular Connecticut Street  
18 building or they may meet other places  
19 if they desire so that I see little in  
20 the way of infringing upon their rights  
21 of association. The question here has  
22 to do with gambling and loan sharking  
23 activities, not with political views  
24 or religious views. Mr. Gresens, is  
25 there anything you want to say?

MR. GRESENS:

I would like to respond to a few



1 of Mr. Abramowitz' arguments, your Honor.  
2 First of all, in relation to the First  
3 Amendment grounds, I think, your Honor,  
4 you have correctly pointed out just as  
5 the Court did in the Bursey case, there  
6 is a distinction between the kinds of  
7 questions that are asked. The Bursey  
8 case dealt with the investigation of a  
9 Black Panther newspaper and on appeal,  
10 the Court there looked at each question  
11 that had been asked and refused and  
12 decided that some of them clearly in-  
13 volved violation of First Amendment  
14 rights, and as to those, that did not  
15 deal specifically with internal affairs  
16 of the press, they upheld the right of  
17 the Government to move on a refusal to  
18 testify. I would also direct the Court's  
19 attention to a subsequent case which has  
20 been decided by the Ninth Circuit,  
21 Lewis vs. the United States, 501 F2d, 418,  
22 which was decided in 1974. That case  
23 involved a recalcitrant witness who was  
24 the manager of a radio station and the  
25 Court rejected the First Amendment defense

1 to the contempt charge because quote  
2 "There was not showing that the request  
3 of the grand jury were in the course of  
4 official harassment of the press and  
5 not for legitimate purposes of law  
6 enforcement", and I submit that is  
7 precisely what we have here today, your  
8 Honor. We are investigating this club.  
9 It is a legitimate investigation. I  
10 think the questions show it. I think  
11 Mr. Stewart's presentation to the Court  
12 on previous occasions as to the scope  
13 and direction of our investigation  
14 have indicated that and I think that the  
15 First Amendment grounds really are not  
16 involved here. Mr. Abramowitz has also  
17 submitted an affidavit regarding the  
18 wiretap information here and he states  
19 that Mr. Gresens did not deny the fact  
20 that Mr. Buscaglia was overheard. I  
21 submit, your Honor, that in the interim  
22 period of time, I have found that there  
23 is some authority for the proposition  
24 that the Government should respond by  
25 affidavit to such an allegation and that



1 authority is Korman 486 F2d 926, and I  
2 am prepared, your Honor, to offer the  
3 Court, this morning - -

4 THE COURT: You say 46 FRD?

5 MR. GRESENS: 486 F2d 926, Seventh Circuit, 1973.

6 THE COURT: Is that 46? Could it be 46?

7 MR. GRESENS: 486.

8 THE COURT: Oh, 486.

9 MR. GRESENS: 486, I am sorry, and even though  
10 the Second Circuit has not adopted this  
11 rule - -

12 THE COURT: As far as I am concerned, Mr.  
13 Gresens, we have your statement made in  
14 open court, but why don't you file the  
15 affidavit to keep the record straight.

16 MR. GRESENS: I would just like the record to be  
17 complete in this case, your Honor. I  
18 would like it to be abundantly clear that  
19 our proceedings in this case have, in all  
20 ways, been fair and regular and we have  
21 tried to give the witness here every  
22 benefit of fairness in our proceedings.

23 THE COURT: All right. We heard the statements  
24 as far as electronic surveillance, - we  
25 heard the statements of the Government

1 in open court and we have heard it on  
2 a number of occasions and we have the  
3 affidavit of Mr. Gresens about his in-  
4 vestigation.

5 MR. ABRAMOWITZ:

Your Honor, I submit - -

6 THE COURT:

Just a minute, Mr. Abramowitz.

7 MR. ABRAMOWITZ:

I am sorry, your Honor.

8 THE COURT:

Also, I had a meeting in chambers  
9 with Mr. Gresens and from all of this,  
10 I am satisfied that the representation  
11 made by the Government is correct and  
12 that I am willing to rely upon it and is  
13 there something else?

14 MR. ABRAMOWITZ:

Yes, your Honor. In Paragraph 4  
15 of this affidavit, Mr. Gresens indicates  
16 that he directed a search be made to  
17 determine whether or not the residence  
18 of Joseph Buscaglia had been subjected  
19 to any electronic surveillance and indi-  
20 cates that apparently it is not, but I  
21 note, and I read this quickly, but I note  
22 on a quick reading that there is no  
23 statement that the social club of which  
24 Mr. Buscaglia is the secretary-treasurer  
25 has not been tapped and I would assert



1 again, your Honor, that if he can't  
2 tell me that it has not been tapped, then  
3 I cannot accept his assertion that Mr.  
4 Buscaglia hasn't been overheard, only  
5 because I don't think he knows whether he  
6 has been overheard or not and there is  
7 reason to believe he has, if there has  
8 been a bug in there, your Honor.

9 THE COURT:

All we can do, Mr. Abramowitz, at  
this stage is - -

10 MR. GRESENS:

11 I was about to say Mr. Abramowitz  
12 is assuming the tap was placed there  
13 simply because the Government will not  
14 deny or disclose its existence. As I  
15 stated in court the other day, I don't  
16 believe we have any obligation to disclose  
17 what techniques we have used at what  
18 locations. Now, there is abundant case  
19 law to the effect it is going to take  
20 more allegation by the witness to bring  
21 the Government to a test of its proof.

22 THE COURT:

Mr. Gresens, you are telling me you  
are conducting this investigation, you,  
in cooperation with Mr. Stewart.

23 MR. GRESENS:

24 That is correct, your Honor.  
25

1 THE COURT:

You are telling me that you are  
2 not using any material which comes to  
3 you through the fact that Mr. Buscaglia  
4 was overheard on any tape?

5 MR. GRESSENS:

That is correct, your Honor.

6 MR. ABRAMOWITZ:

Your Honor, - -

7 THE COURT:

Yes.

8 MR. ABRAMOWITZ:

I would say that if Mr. Gresens  
9 cannot answer a direct question as to - -

10 THE COURT:

All right. I have had enough, Mr.  
11 Abramowitz. I have heard the argument.  
12 I have considered it very carefully. It  
13 seems to me that an order is appropriate  
14 here. Mr. White, we should file the  
15 affidavits of Mr. Buscaglia and Mr.  
16 Abramowitz received this morning. Also,  
17 the affidavit of Mr. Gresens, the testi-  
18 mony of Joseph A. Buscaglia taken before  
19 the grand jury on March 4, 1975. Mr.  
20 Knisley, as part of the record, and it  
21 probably ought to be a part of the record  
22 in all these cases, the in camera meeting  
23 held between you, Mr. Gresens and myself,  
24 that should be made a part of the record  
25 and sealed.



1 In this case, Mr. Buscaglia, I am  
2 going to sign the order pursuant to  
3 Title 28, Section 1826 and remand you to  
4 the custody of the United States Marshal.  
5 I want to make absolutely clear to you  
6 that you have the absolute right, - as  
7 a matter of fact, right now, or at any  
8 day hereafter, to notify the Court,  
9 notify your attorney, notify Mr. Gresens  
10 or the clerk, whoever you want to get  
11 in touch with, and say "Take me before  
12 the grand jury. I am willing to testify."  
13 If you do that and you testify, then,  
14 automatically and immediately, the order  
15 that I am signing here will be vacant  
16 and, in other words, it is all up to you,  
17 and, therefore, that is the, - here are  
18 the other papers. That will be the order  
19 of the Court.

20 MR. ABRAMOWITZ:

Your Honor, for the record, I  
request a stay of the execution of  
judgment in this case.

22 THE COURT:

23 That motion is denied. Granting  
24 stays in these kind of matters would  
25 certainly defeat the purpose of Section

1 1826. Under the section, as you know,  
2 Mr. Abramowitz, 1826 provides that no  
3 person confined pursuant to Sub-Section  
4 (a) of this section shall be admitted to  
5 bail pending determination of appeal  
6 taken by him from the order of his con-  
7 finement, if it appears that the appeal  
8 is frivolous or taken for delay. As far  
9 as my record here, as far as granting  
10 rights of bail, pending appeal, I do it  
11 in almost all case, but I refuse to do  
12 it in this case. Any appeal, - it  
13 continues, the section, - any appeal from  
14 an order of confinement under this section  
15 shall be disposed of as soon as practi-  
16 cable and not later than thirty days from  
17 the filing of such appeal. Mr. Buscaglia,  
18 you have two paths here. One is to  
19 obey the order of the Court and go and  
20 testify. The other is if you do not  
21 agree with the order of the Court, then  
22 you may appeal it. If you do not have  
23 funds to retain a lawyer, the Court will  
24 assign a lawyer to represent you on that  
25 appeal. If you desire to appeal, the  
Appellate Court as you can see from the



1 section, will take on the matter  
2 promptly.

3 MR. ABRAMOWITZ: Thank you, your Honor.

4 MR. GRESENS: Gasper Bona.

5 MR. MURPHY: Your Honor, I am not going to take  
6 up the time Mr. Abramowitz did.

7 THE COURT: Mr. Murphy, it would seem that many  
8 of the arguments Mr. Abramowitz made you  
9 too desire to make.

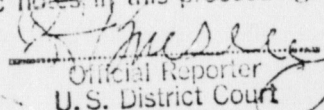
10 MR. MURPHY: Yes, your Honor, and although it  
11 is the Nairy's Social Club which is  
12 involved, the situation is the same,  
13 your Honor, and all of the arguments  
14 made by Mr. Abramowitz are applicable  
15 to Mr. Bona. I would join in those  
16 arguments and ask the Court to consider  
17 the record as my having made the same, -  
18 taken the same position.

19 THE COURT: All right. What we will do is we  
20 will consider, and I am sure this will  
21 agree with you, Mr. Gresens, we will  
22 consider the argument made in the  
23 Buscaglia case as far as the record in  
24 the Bona case and, Mr. Murphy, if there  
25 is anything further, you have to say,

1 I am ready to listen.

2  
3 (Excerpt concluded.)

4 I hereby certify that this record is a  
5 true and accurate transcript from my  
6 stenographic notes in this proceeding.

7   
8 Official Reporter  
9 U.S. District Court

10 \* \* \* \* \*





**HELLER AND RAMM**

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852-7997

EDWARD HELLER  
JULIUS M. RAMM

April 3, 1975

United States Court of Appeals  
United States Court House  
Foley Square  
New York, New York 10007

Attention: Motion Clerk

Re: U.S.A. -vs- In the Matter of Joseph Moses, Grand Jury Witness, et al  
Docket No. 75-1080

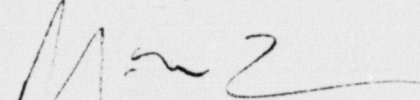
Dear Sir:

We enclose herewith original Motion and Stipulation in regard to the filing of a Supplemental Brief on the above, along with seven copies of the Supplemental Brief and Appendix.

Briefs have this date been served on the United States.

Very truly yours,

HELLER AND RAMM



Julius M. Ramm

JMR:my

Enclosures